

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HERBERT L. JOSEPH, II,

Plaintiff,

v.

PLANET FITNESS ASSET CO. LLC *doing*
business as PLANET FITNESS,

Defendant.

Civil Action No. 2:21-cv-25

Hon. William S. Stickman IV

Hon. Lisa Pupo Lenihan

ORDER OF COURT

Pro se Plaintiff Herbert L. Joseph, II (“Plaintiff”) filed a Second Amended Complaint alleging that his rights have been violated under § 1981 of the Civil Rights Act of 1866 because he is of African descent, and he was discriminated against based on his race. (ECF No. 10). Defendant Planet Fitness Asset Co. LLC filed a Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6). (ECF No. 15). After Plaintiff filed a Response (ECF No. 19), Magistrate Judge Lisa Pupo Lenihan issued a Report and Recommendation on November 4, 2021, recommending that the Court grant Defendants’ Motion to for failure to state a claim under 42 U.S.C. § 1981, dismiss Plaintiff’s claim with prejudice, and find further amendment would be futile. (ECF No. 20). Plaintiff was given until November 22, 2021, to file Objections to the Report and Recommendation. (ECF No. 20).

No Objections having been filed, the Court ADOPTS Magistrate Judge Lenihan’s Report and Recommendation as its Opinion. It concurs with her legal analysis and conclusion.

AND NOW, this 6th day of December 2021, is it is HEREBY ORDERED that Defendant’s Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) (ECF No. 15) is

GRANTED. Plaintiff's claim is DISMISSED WITH PREJUDICE as the Court holds further amendment would be futile.¹

BY THE COURT:

Handwritten signature of William S. Stickman IV in black ink.

WILLIAM S. STICKMAN IV
UNITED STATES DISTRICT JUDGE

¹ “An amendment is futile if it merely restates the same facts as the original complaint in different terms, reasserts a claim on which the court previously ruled, fails to state a legal theory, or could not withstand a motion to dismiss.” 3 James Wm. Moore et al., *Moore’s Federal Practice* ¶ 15.15 (3d ed. 2021).